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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

OCT 21 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of ) MM Docket 94-63  
 )  
Amendment of Section 73.202(b), ) RM-8450  
Table of Allotments, )  
FM Broadcast Stations. )  
(Rocky Mount and Bassett, Virginia)

TO: Acting Chief, Allocations Branch

**MOTION TO STRIKE**

Edward A. Baker ("Baker") by his attorney, moves the Chief, Policy and Rules Division, to strike all of those REPLY COMMENTS OF WNLB RADIO, INC. filed October 11, 1994, excepting that portion thereof consisting of paragraphs 7, 8 and 9, which relate to Stanleytown, Virginia.<sup>1</sup>

**BACKGROUND**

WNLB Radio, Inc. ("Petitioner") filed a Petition for Rule Making March 1, 1994, seeking "to reassign Channel 260 from Rocky Mount to Bassett, Virginia, to change the class of the allotment

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<sup>1</sup> Indeed, the entire pleading of Petitioner's Reply Comments should be stricken. In a normal proceeding of this type where someone other than the original petitioner submits a counterproposal, and the Commission issues a Public Notice similar to that released in this proceeding, providing for Reply Comments, any other interested party can reply to the counterproposal but the counterproponent is by the rules of pleading precluded from filing Reply Comments to his counterproposal. A pleading filed by the proponent in support of his counterproposal would be redundant and not in any sense "reply comments". The entire reply comments of Petitioner WNLB may well be stricken.

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from A to C3, and to modify the license of Station WZBB [licensed to petitioner] accordingly".

In response thereto, the Commission released June 28, 1994 a Notice of Proposed Rule Making indicating the changes sought by Petitioner and stating that "interested parties may file comments on or before August 19, 1994 and reply comments on or before September 3, 1994. . .". Baker filed comments in opposition, pointing out that the public interest would be seriously disserved by the channel changes proposed and that the city of Rocky Mount would lose its only local FM service. Comments were also filed by Petitioner, including a "counterproposal":

In light of the questions the Commission has raised with respect to its original proposal, WNLB also submits herewith a counterproposal that Channel 260C3 be substituted for Channel 260A and that the channel be reallocated from Rocky Mount to Stanleytown, Virginia.

Baker filed timely reply comments as directed by the Notice of Proposed Rule Making. Petitioner filed none. In a Public Notice (Report No. 2031) released September 26, 1994, the Commission proposed amendment to the FM Table of Allotments to substitute Channel 260C3 for Channel 260A and reallocate 260C3 from Rocky Mount to Stanleytown. The said Public Notice concluded:

THE ABOVE PETITION FOR RULEMAKING WILL BE TREATED AS A COUNTERPROPOSALS IN MM DOCKET 94-63. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN WITHIN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE. (Emphasis Supplied)

Baker filed timely Reply Comments to the Stanleytown counterproposal and Petitioner has now filed Reply Comments, not only to the Stanleytown counterproposal, but also to Baker's

Comments in Opposition to the original Notice of Proposed Rule Making and to Baker's Reply Comments which were timely filed in reply to Petitioner's Comments and counterproposal received August 19, 1994.<sup>2</sup>

#### ARGUMENT

The majority of Petitioner's REPLY COMMENTS OF WNLB RADIO, INC., filed on or about October 11, 1994 deals with response to Baker's Comments and Reply Comments, all timely filed. In short, Petitioner apparently overlooked the filing date for Reply Comments and now would seek another bite at the apple and reply to matters raised by Baker in his Comments and Reply Comments. Baker previously showed that there were no reasonably available sites for the channel change proposed in the NPRM, that the areas and populations proposed to be served by Petitioner were not correct, and that Stanleytown is not a community meriting allotment of an FM channel which would result in the removable of the only local FM service from Rocky Mount. Petitioner had an opportunity to address each of these in Reply Comments filed August 19 but failed to file a responsive pleading. By the language quoted above from the Commission's Public Notice of September 26, 1994, Reply Comments to it were limited to the counterproposal, i.e. Stanleytown and not matters raised in the NPRM or prior pleadings. Petitioner had its

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<sup>2</sup> The original NPRM designated the proposed allotment to Bassett as RM-8450; the Public Notice with the counterproposal to Stanleytown was designated RM-8526. The REPLY COMMENTS OF WNLB RADIO, INC. were addressed to RM-8450, an apparent error.

opportunity to respond and failed to do so. It cannot now be afforded another opportunity, in order to rectify failure to timely object.

The only portion of Petitioner's Reply Comments of October 11, 1994 that relate to Stanleytown are paragraphs 7, 8 and 9; the remainder of that pleading concerns areas to be served, etc. which were tendered with respect to Rocky Mount and for which opportunity was afforded for response but no response was made by Petitioner.

#### CONCLUSION

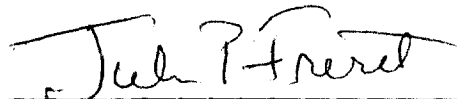
It is inequitable and unfair for Petitioner to sleep on its right of reply, receive and consider Baker's reply comments, and then attempt to oppose them in a belated pleading. A major portion of Petitioner's reply comments contains material that should have been filed September 6, 1994.<sup>3</sup>

All of the Petitioner's reply comments must be stricken except that portion relating to Stanleytown.

Respectfully submitted,

EDWARD A. BAKER d/b/a  
RADIO 900

By



Julian P. Freret  
His Counsel

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October 21, 1994

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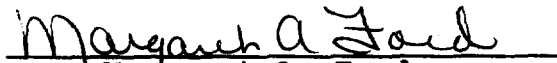
<sup>3</sup> The date listed in the NPRM, September 3, 1994, is a Saturday. The following Monday was Labor Day, a holiday; hence the due date was Tuesday, September 6, 1994.

CERTIFICATE OF SERVICE

I, Margaret A. Ford, office manager in the law firm of Booth, Freret & Imlay, do certify that copies of the foregoing MOTION TO STRIKE were mailed this 21st day of October, 1994, via U. S. Mail, postage prepaid, first class, to the offices of the following:

\*John A. Karousos, Acting Chief  
Allocations Branch  
Federal Communications Commission  
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\* Via Hand Delivery